



**THE LAW SOCIETY OF SCOTLAND**  
**APTITUDE TEST FOR EU QUALIFIED LAWYERS**

**PAPER II**  
**SCOTTISH LEGAL SYSTEM, INCLUDING EVIDENCE AND**  
**CIVIL & CRIMINAL PROCEDURE**

7 May 2019

1330 – 1630

Candidates should answer **FOUR** questions, **TWO** from  
Section A and **TWO** from Section B.

All questions are marked out of 100 and are weighted equally

**Answers to each SECTION should be written in a separate  
answer book**

## SECTION A : EVIDENCE

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**Candidates should answer TWO of the following questions. All answers should be fully reasoned and supported by adequate citation of authority.**

### Question 1

Bob is suspected by the police of involvement in a number of violent sexual assaults, all on prostitutes. In an attempt to obtain evidence to confirm their suspicions a female plain-clothes officer, Jan, is instructed to make contact with Bob and to befriend him, without revealing the fact that she is a police officer. Jan discovers that Bob is using an online dating site and manages to arrange a meeting with him through this site. She gains his trust and they start to meet on a regular basis.

During one of their meetings, she says to him, still without revealing her true identity, "Look I know you were involved in those attacks. But don't worry – actually it's bit of a turn on. Why don't you tell me all about it? Bob replies, "Yeah, it was me, strangulation is the only way to deal with women like those."

Jan has been carrying a concealed recording transmitter, which allows a colleague, Jack, to listen in to her conversations with Bob. However, at the time Bob made his statement, the quality of the recording was poor and Jack could only make out some of what was being said. Later, on playing back the machine at the police station it was found that the recording of the conversation between Jan and Bob remained indistinct.

Is Bob's statement admissible?

The statement is the only piece of evidence against Bob. Assuming that it is admissible, is there sufficient evidence to sustain a conviction against him?

### Question 2

Write brief notes on **TWO** of the following points, with full reference to authority

- (a) Expert evidence as to the credibility of a witness.
- (b) The *Howden* doctrine.
- (c) Privilege of communications made in aid of negotiation.

### Question 3

Following various incidents in the town centre Ned is charged with breach of the peace. When the police arrived at the scene, Betty said that she had seen what had happened. She pointed to Ned and said that he has been involved. Ned is then arrested and is taken to the police station.

The police interview Libby, who was also at the scene. She tells them that she saw something but wasn't sure if she could recognise the culprit if she saw him again. At an identification parade Libby tells the police that Ned looks quite a lot like the man she saw.

At a later identification parade, another witness Nellie picks out Ned as the culprit and tells the police that he was definitely the man involved. Prior to the trial Nellie has disappeared and despite police efforts to find her she cannot be traced.

At the trial Betty fails to identify Ned and in her evidence she says that she had not pointed out anyone to the police at the scene. Libby gives evidence that although she remembered taking part at an identification parade she cannot recall what she did or said there.

The procurator fiscal is considering leading evidence from the various police officers involved with the investigation. Will this evidence be likely to help prove Ned's guilt?

**END OF SECTION A**

## SECTION B: CIVIL AND CRIMINAL PROCEDURE

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*Candidates should answer TWO questions from this section.*

### Question 4

- a) What documents must be lodged with the Sheriff Clerk by the defence before every First Diet?
- b) What time limits, if any, apply to the lodging of these documents?

Your client Tom has a First Diet at the local Sheriff Court. He is charged with assault-He states he was not present at the incident but was in England with his friend John. John gave a statement to the investigating police officer at the time but tragically John was killed in a road traffic accident last week. Tom advises the offence was committed by his cousin Willie. Moreover, Willie has admitted committing the offence to Steven.

- c) What steps must you take to fully prepare Toms case for the First Diet?

Alan consults you. He has a pleading diet in the Sheriff summary court. He is charged that being the registered Keeper of a motor vehicle, which was involved in an accident and failed to stop, that he has failed to provide the police with details of the identity of the driver. He advises you that he sold the car a week before the accident to a car buying company and does not know who was driving.

- d) What steps do you require to take to protect Alan's position at the pleading diet?
- e) In summary procedure, what is the method of appeal against sentence alone?
- f) What time limit if any applies to such an appeal?

### Question 5

- a) In an Ordinary Cause action in Edinburgh Sheriff Court, your client, the Defender, instructs you to make an offer to settle the action by paying a principal sum (inclusive of interest) of £150,000 plus expenses to the pursuer. You have advised your client that the making of such an offer might offer some costs protection in the event that the case proceeds to Proof.
  - i. What procedural steps must you take in order to make the offer?
  - ii. Draft the document that would be prepared by you to set out the terms of the offer.
  - iii. Assume the Defender lodged a Tender of £150,000. Explain what motion in respect of expenses you would make on the Defender's behalf in the event that the case proceeds to Proof and the Pursuer obtains a decree for £120,000 (inclusive of interest) plus expenses.

## Question 6

Answer the following questions with reference to appropriate procedural rules and authorities:

- (a) Explain the differences between adjusting pleadings and amendment pleadings. Explain the process for obtaining the court's permission to amend in the Sheriff Court;
- (b) Describe the procedure by which documentary and other real evidence may be recovered once an Ordinary action has been commenced in the Sheriff Court;
- (c) Before a Sheriff Court Ordinary action is raised, what procedure is available to inspect property?
- (d) What procedure is available to prevent a defender from divesting himself of heritable property during the course of legal proceedings, before decree has been granted? What matters must the Sheriff be satisfied on before granting an such order;
- (e) You act for the pursuer in a Sheriff Court personal injury action. A Proof has been fixed.
  - a. When will you discover which witnesses the defender intends to lead at proof?
  - b. What procedural steps should you take to secure the attendance of the pursuer's witnesses at court, and when should you do this?
- (f) What happens when a cause is sisted? Provide 3 examples of circumstances in which a party might ask for a sist.
- (g) What are the differences between a decree of dismissal and a decree of absolvitor in favour of a defender.

**END OF SECTION B**

**END OF QUESTION PAPER**